

## **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- - - - -x

In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 1, 2009

7:59 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1  
2 HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b),  
3 (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004,  
4 and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale  
5 and Purchase Agreement with Vehicle Acquisition Holdings LLC, a  
6 U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens,  
7 Claims, Encumbrances, and Other Interests; (b)the Assumption  
8 and Assignment of Certain Executory Contracts and Unexpired  
9 Leases; and (c)Other Relief; and (ii)Schedule Sale Approval  
10 Hearing

11  
12 HEARING re Notice of Settlement of an Order Denying Motion of  
13 the Unofficial Committee of Family & Dissident GM Bondholders  
14 for an Order Directing the United States Trustee to Appoint an  
15 Official Committee of Family & Dissident Bondholders  
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1 on the tort side. But, obviously -- I think we've pretty much  
2 covered things. Mr. Esserman, I'll hear from you next. Mr.  
3 Esserman, I think at this point I'd prefer if you limit  
4 yourself to things that relate to asbestos.

5 MR. ESSERMAN: That's what -- I'm sorry.

6 THE COURT: Okay, go ahead.

7 MR. ESSERMAN: Sandy Esserman for the ad hoc  
8 committee. That's what I was intending to do, Your Honor, I  
9 was not going to cover any other of the topics that were either  
10 covered by other parties or covered in my brief. And to a  
11 certain extent Mr. Jakubowski covered certain things that I was  
12 going to cover. In fact, his presentation sounded like the  
13 presentation of "This is My Life", he cited so many cases that  
14 I either argued and won or lost or have been in.

15 But anyway I want to focus strictly on the future  
16 clients' issues which I think is to me one of the more  
17 troubling aspects of this -- of this sale. And a week or so  
18 ago I asked that there be a future clients tort czar appointed  
19 in this case. Well, why did I ask that? Because what I felt  
20 GM was doing, in fact they are doing, is trying to bind the  
21 futures in some way without having the futures present or  
22 having the futures represented. And the way I left the hearing  
23 was, it's -- it was and is the choice of GM on that issue.

24 There was a way to do this; they chose not to. With  
25 asbestos claims in particular it's very specific about how you

1 bind future claims and that's through a Manville type 524(g)  
2 type solution. We think that's clear from the statute and why  
3 is it clear from the statute? It's a matter of -- it's not  
4 just the statute is a matter of constitutional due process.  
5 The futures are here, I don't represent the futures, I don't --  
6 I may have a future claim, I don't know it. I sure hope not.

7 But we're -- we're talking about a claimant that is  
8 going to develop a disease two, three, four, five, six, seven  
9 years down the road. We have testimony that there's an  
10 estimate of ten-year present value that there's going to be  
11 asbestos claims. Ten years. Up to at least ten years from  
12 now, probably more. There's a long incubation period. This is  
13 very well known and those people are not present. They cannot  
14 speak and it's hard to see under the constitutional due process  
15 binding them in any way.

16 There's no notice that can be given or should be  
17 given. And I think we need to look not just to the statue of  
18 524(g) but also the practical implications of the whole thing.  
19 Let me just give You Honor an example. This is how the case  
20 could well come down. Your Honor could approve the sale. This  
21 could be a wrap-up in say two years, perhaps, maybe less.  
22 Maybe within a year Your Honor's going to institute a bar date,  
23 there's going to be a claims bar date. Probably a year or two  
24 or so there's going to be distributions, year three or day two  
25 plus one someone is going to get sick of cancer and die.



1 Someone who was a mechanic that been working on a GM -- on GM  
2 cars. It has a twenty, thirty, forty, ten-year -- who knows  
3 how long incubation period.

4 Where is that person going to go? Well, you heard  
5 some testimony, they can't, according to the -- the purchaser,  
6 the purchaser says no, not me, I'm not taking any of that  
7 liability. So if -- if Your Honor would uphold that, that  
8 claimant has -- cannot go to New GM, notwithstanding the  
9 successor claims issues that have been discussed so far, and he  
10 can't go to OldCo, because there's been a distribution made and  
11 a bar date has been instituted.

12 And that's the problem and that's why 524(g) has been  
13 instituted. In addition we've had a decision that came down  
14 that won in the Second Circuit and lost in the Supreme Court  
15 but I don't think it's really a loss, and that's the Manville  
16 case, also known as Travelers v. Bailey, which came down and I  
17 think this Court is going to need to reconcile anything that it  
18 does in this decision with regard to future tort claims --  
19 future asbestos claims with the June 18th, 2009 decision of the  
20 Supreme Court.

21 These -- I think that court very clearly held that --  
22 and it was an unusual decision, Second Circuit decision had a  
23 lot to it also that wasn't necessarily reversed. But in  
24 essence it held that when you're before the court, for  
25 instance, my tort committee, they're all current claimants,

1 they're before -- they're before your Court. They're going to  
2 be bound whatever you do and say, whether it's extra-  
3 jurisdictional or not.

4 But what the Supreme Court said a couple weeks ago  
5 were those people that were not there cannot be bound by  
6 anything that happens in the bankruptcy court. And in that  
7 decision, the slip opinion at page 17, they specifically cite  
8 how they could be bound and what kind of channeling injunction  
9 has to -- can be issued specifically citing 524(g). And they  
10 say on direct review today "A channeling injunction of the cert  
11 issued by the bankruptcy court in 1986 would have to be  
12 measured against the requirements of Section 524(g) (to begin  
13 with at least)" and that's a direct quote.

14 And in that decision of a couple weeks ago we're  
15 going back to the Second Circuit, unfortunately Judge  
16 Sotomayor, who was on my panel is -- will no longer be there  
17 probably, but the other judges will be. And we're going to  
18 have to determine whether my clients in that case in fact were  
19 bound by the 1986 decision, because the Supreme Court left open  
20 the issue and said we are not necessarily bound by the 1986  
21 decision or injunction, channeling injunction of the court, if  
22 they somehow were not present or represented or did not exist  
23 or whatever and they said the same thing for the Chubb  
24 Insurance Company.

25 So I think to a certain extent the issues that Your

1 Honor has to wrestle with are constitutional and jurisdictional  
2 as well -- as well as sale. And in my view, dollar-wise I  
3 don't want to say it's a pimple on the elephant but this is not  
4 an asbestos driven case; we know that. But these are  
5 constitutional and due process issues that we consider to be  
6 very, very important and have to be dealt with, with  
7 appropriate consideration.

8 So I would urge Your Honor to reconcile whatever he  
9 does with that opinion of the Supreme Court. In addition, Mr.  
10 Bressler referred to some colloquy of the Second Circuit in the  
11 Chrysler decision, and there's been some discussion of that.  
12 I'm sure I'm misremembering this and the record will reflect  
13 what actually happened but I actually think that was colloquy  
14 that I had with Judge Sack and Judge Sack was saying to me  
15 during that oral argument, because I was involved in that one  
16 too, while future claims clearly, you know, they may not be --  
17 well, you just go ahead -- you just go ahead and institute  
18 suit. And my response to that was that's sending the wrong  
19 message to ignore a court order or to try and get around a  
20 court order or hope a state court will ignore a successful  
21 liability or the court that says you cannot do something.

22 THE COURT: One of the problems I have, Mr. Esserman,  
23 is how I should work with things the judge is saying as a part  
24 of the back and forth with counsel in oral argument I remember  
25 an instance in Adelphia where somebody cited me a transcript

1 from a certain district judge and I couldn't believe some of  
2 the things she said, but then I realized that judges say all  
3 sorts of things in oral argument, at least sometimes they do  
4 want to be devils' advocates; sometimes they mean them and  
5 sometimes they're just probing and other times they haven't  
6 thought about it as much they would after the argument was over  
7 and they sit down and they read the cases. And how do I slice  
8 and dice comments in oral argument to know which of those  
9 multiple categories something can be in?

10 MR. ESSERMAN: I agree with Your Honor, I just wanted  
11 to comment on it, you've got to wait for the opinion or at  
12 least look at the opinion when it comes down -- when and if it  
13 comes down before you can really do anything because as Your  
14 Honor knows, Your Honor may ask the question that indicates one  
15 thing and completely rule the opposite. And I understand that.  
16 It was just a very telling comment to me by Judge Sack and it  
17 would have been consistent with everything he's ever written  
18 that I've ever read that he would hold that future claimants  
19 would not be bound. But that assumes that he's going to be  
20 consistent with his other opinions, which I think you have to  
21 look at.

22 THE COURT: Then there is room for me to try to make  
23 a judgment as to whether the appellate judge is really  
24 telegraphing the way he's thinking as compared to being the  
25 devil's advocate?

1 MR. ESSERMAN: Your Honor, I would not urge that on  
2 this Court, I think that that's a -- that would be -- I think  
3 it is -- it should be of interest perhaps to the Court but I  
4 don't Your Honor ought to base any ruling on that. I think  
5 Your Honor has to base his ruling on current decisions and as  
6 Mr. Jakubowski quoted, and as I'm quoting to you Supreme Court  
7 decisions, I think that those and -- and due process decisions,  
8 I think that that's the safer -- that's the safer play.

9 Of course we don't have an opinion from the Second  
10 Circuit. We don't what they're doing, we don't know what their  
11 hold -- what they're really going to hold, we don't know  
12 whether they're going to make some broad policy arrangement or  
13 decision because Chrysler was in fact a shut down company in  
14 which nobody was working, everyone had been thrown out of work,  
15 the plants had been shuttered, every one of them. They stopped  
16 production; it wasn't like a GM which is an operating business.  
17 Chrysler was not an operating business; Chrysler was shut down  
18 and if Fiat didn't come to the rescue, it was going to stay  
19 shut down.

20 So we don't know exactly what is going through the  
21 Court's mind there other than saving 30, 40,000 jobs it may  
22 have been more for the Chrysler Company, which is frankly -- I  
23 would say GM has some similarities there because there's a  
24 reason the Treasury is here. It's not just because they are a  
25 commercial lender; this is highly unusual. We all recognize

1 that, we all know that the stakes are just not a loan to a  
2 corporation that this is -- this had been one of the more  
3 important companies in American history and to the American  
4 economy and that cannot be ignored. The Treasury wouldn't be  
5 doing what they are doing. Reminded of a phrase made by a guy  
6 named Charlie Wilson, who a few people off to my right I'm sure  
7 know but probably nobody else, and this isn't the Charlie  
8 Wilson of Charlie Wilson's war, he's a former --

9 THE COURT: I saw the movie if that's the one.

10 MR. ESSERMAN: I did too; different Charlie Wilson.

11 UNKNOWN SPEAKER: He was secretary of defense, Your  
12 Honor.

13 MR. ESSERMAN: He was secretary of defense --

14 THE COURT: Probably a different war too.

15 MR. ESSERMAN: Yes, Secretary of Defense under  
16 Eisenhower and he says "For years I thought what was good for  
17 our country was good for General Motors and vice versa". And  
18 of course President Obama said the same, paraphrased it, he  
19 actually thought he was quoting it but I actually quoted it.

20 THE COURT: Not without knowing the name of the guy  
21 who saw that I'm old enough to remember that.

22 MR. ESSERMAN: Well, unfortunately -- I am, too,  
23 although I look much younger. Strike that from the record,  
24 please.

25 Anyway, Your Honor, this has been a long two days;

1 it's been a hot two days too. We recognize the issues and  
2 truly the weighty issues that Your Honor has to wrestle with.  
3 Nobody would like to be in your seat right now. I understand  
4 the pressures, both political, national/international to  
5 approve this -- approve this sale.

6 I'm officially telling you that I'm resting on my  
7 papers, but I certainly can understand a decision whereby you  
8 try and reconcile some of these issues and approve a sale. But  
9 carve out certain things: carve out the issues of future  
10 claims in which we have testimony that that's not material to  
11 the company and that the company couldn't handle these claims  
12 without a problem -- without a problem financially. We had  
13 testimony from the CEO of GM on that. Thank you very much.

14 THE COURT: Thank You. Ms. Cordry, I think you're up  
15 on deck but I think some of the things you were going to say  
16 we're pretty ably handled by the two guys there.

17 MS. CORDRY: All right.

18 THE COURT: Come to a mic if you would, please.

19 (Pause)

20 MS. CORDRY: As I suggested earlier today that we are  
21 still trying to talk to Treasury and the debtors to resolve  
22 these issues and we've had some more discussions -- true,  
23 everyone's been popping in and out of the door every few  
24 minutes.

25 THE COURT: But the truth that has preoccupied us.